

Exhibit JPG-1  
12 Pages

**EXHIBIT JPG-1**  
**QUALIFICATIONS, PUBLICATIONS AND TESTIMONY**

**Qualifications, Publications and Testimony**  
**Joseph Paul Gillan**

**EDUCATION**

B.A. Economics, University of Wyoming, 1978.

M.A. Economics, University of Wyoming, 1979.

Concentration in the economics of public utilities and regulated industries with an emphasis on price theory and statistics.

**EMPLOYMENT HISTORY**

1986 - Present

Private consulting practice specializing in the economic evaluation of regulatory policies and related business opportunities in the telecommunications industry. Economic and market analysis, product development, expert testimony, and regulatory planning services.

1985 - 1986 U.S. Switch; Vice President, Strategic Planning/Marketing

Responsibilities included project management, marketing and regulatory objectives for *Centralized Equal Access*, a networking concept design to provide equal access to rural areas while positioning independent telephone companies for competition.

1980 - 1985 Illinois Commerce Commission; Director, Market Structure Program

Primary staff responsibility for Commission policy concerning the level and structure of competition in the telecommunications and energy industries. Designed regulatory framework for IX competition, intralata market structure and developed intrastate access charge plan. Responsible for Commission representation in the Sunset process and all filings before federal agencies.

1979 Mountain States Telephone Company; Demand Analyst

Performed statistical analysis of the demand for access by residential subscribers.

**EXPERT TESTIMONY**

- Louisiana      Re: Review and Consideration of BellSouth's Resale Cost Study, Docket U'22020, on behalf of AT&T and LDDS WorldCom.
- Florida        Re: Arbitration Request of AT&T Under Section 251 of the Federal Telecommunications Act, Docket 96-0833, on behalf of AT&T.
- California     Re: Rulemaking to Govern Open Access to Bottleneck Services and Establish a Framework for Network Architecture Development, Docket R.93-04-003, on behalf of LDDS WorldCom, Inc.
- Tennessee     Re: The Avoidable Costs of Providing Bundled Local Services for Resale, Docket 96-00067, on behalf of AT&T Communications.
- Georgia        Re: MCI Metro/MFS Intelenet Petitions to Establish Rates, Terms and Conditions for Unbundled Loops and Interconnection, Dockets 6537-U and 6415-U, on behalf of the Competitive Telecommunications Association.
- Georgia        Re: Petition of AT&T to Establish Resale Rules, Rates, Terms, and Conditions and the Initial Unbundling of Services, Docket No. 6352, on behalf of AT&T Communications.
- Penn.          Re: Application of MFS (et al) to Provide and Resell Local Exchange Telecommunications Services, Phase 11, Dockets A-310203F0002 (et al), on behalf of the Competitive Telecommunications Association.
- Florida        Re: Petitions Establish Non-Discriminatory Interconnection Terms for GTE and United, Docket 95-0984-TP, on behalf of AT&T Communications.
- Kentucky      Re: An Inquiry into Local Competition and Universal Service, Case No. 365, on Behalf of WorldCom, Inc.
- Mississippi    Re: A Docket to Consider Competition in the Provision of Local Telephone Service, Docket 95-UA-358, on behalf of LDDS Worldcom and AT&T Communications.
- Florida        Re: Petitions to Establish Non-Discriminatory Interconnection Terms for BellSouth, Docket 95-0984-TP, on behalf of AT&T Communications.
- Illinois        Re: Petition of AT&T for a Total Local Exchange Wholesale Service Tariff. Docket 95-0458, in behalf of LDDS Worldcom.

**EXPERT TESTIMONY (continued)**

California	Re: Commission. Investigation Into Competition for Local Exchange Service. Dockets R.95-04-043 and L.95-04-044, on behalf of LDDS Worldcom.
Florida	Re: Determination of Funding For Universal Service and Carrier of Last Resort Responsibilities. Docket No. 95-0696-TP, on behalf of the Florida interexchange Carriers Association and AT&T Communications.
Georgia	Re: Petition to Remove Subsidies from Access Charges, Docket 5755-U, on behalf of AT&T Communications.
S Carolina	Re: Southern Bell's Request for a Price Regulation Plan, Docket No. 95-720C, on behalf of ASCII of South Carolina.
Michigan	Re: EstablishmeiltofPermanentInterconnectionArrangements,CaseNo.U10860, on behalf of LDDS/WorldCom.
Mississippi	Re: Docket to Consider Formulating a Properly Structured Price Regulation Plan for South Central Bell, Docket 95-US-313, on behalf of AT&T Communications and LDDS/WorldCom.
Missouri	Re: The Application of Southwestern Bell to Provide Local Plus Service, Case No. TR.-95-241, on behalf of MCI Telecommunications Corporation.
Washington	Re: Interconnection Complaint against US West, Docket UT-941464, on behalf of the Interexchange Access Coalition.
Maryland	Re: Matter of ,he Application of MFS-Intelenet for Local Exchange Authority, Case No. 8584, Phase II, on behalf of LDDS Worldcom.
Mass.	Re: Investigation by the Department into IntraLATA and Local Exchange Competition, D.P.U. 94-185, on behalf of LDDS Worldcom.
Wisconsin	Re: Complaint of MCI, AT&T, Sprint and Schneider Communications to Require Equal Access to the Exchanges of Ameritech Wisconsin, Docket No. 6720-TI-111, on behalf of Schneider Communications.
N Carolina	Re: Investigation into Defined Radius Calling Plans, Docket No. P-100, Sub 126 arid 65, on behalf of LDDS Communications.

**EXPERT TESTIMONY (continued)**

Georgia	Re: Investigation into IntraLATA Presubscription, Docket 5319-U, on behalf of MCI and LDDS/Metromedia
Mississippi	Re: Inquiry as to Whether the Regulation of South Central Bell Should Be Changed from Incentive Regulation to Price Regulation, Docket 94-UA-536, on behalf of LDDS/Metromedia, Inc.
Georgia	Re: Petition of BellSouth for Approval of Georgians First, Docket no. 5258U, on behalf of LDDS/Metromedia
Florida	Re: Investigation in IntraLATA Presubscription, Docket No. 930330-TP, on behalf of the Florida Interexchange Carriers Association.
Alabama	Re: South Central Bell's Proposed Tariff Restructuring the Switched Access Local Transport Element, Docket 23260, on behalf of LDDS/Metromedia Communications.
New Mexico	Re: US West's Proposed Changes to Intrastate Switched Access, Docket 94-204-TC, on behalf of LDDS/Metromedia Communications.
Kentucky	Re: Application of South Central Bell to Modify the Method of Regulation, Docket No. 91-121, on behalf of AT&T, Sprint Communications, and LDDS/Metromedia.
Texas	Re: Applications of Southwestern Bell and GTE to Restructure the Local Transport Pricing of Switched Access Service, Docket 12784, on behalf of the Interexchange Access Coalition.
Illinois	Re: Customer's First Plan Experimental Trial and AT&T Petition for Local Competition, Dockets 94-0096 and 94-0146, on behalf of LDDS/Metromedia.
Louisiana	Re: Application of South Central Bell to Modify the Method of Regulation, Docket No. U-17949-D, on behalf of AT&T, Sprint Communications, and LDDS/Metromedia.
New York	Re: Petition of Rochester Telephone for Approval of a Corporate Restructuring, Case Nos. 93-C-0103 and 93-C-0033, on behalf of LDDS Communications.

**EXPERT TESTIMONY (continued)**

- Illinois Re: Review of Tariffs Restructuring Switched Access Local Transport for GTE, Centel and Illinois Bell. Dockets 94-0043 to 94-0046, on behalf of the Interexchange Access Coalition.
- Florida Re: Petition for Expanded Interconnection by Intermedia Communications of Florida. Docket 92-1074-TP, Requests by United Telephone, Centel, GTE and Southern Bell for Approval of Tariffs Restructuring Switched Access, Dockets 94-0014-TL, 94-0020-TL, 94-0190-TL and 93-0955-TL, on behalf on the Interexchange Access Coalition.
- Louisiana Re: Southern Central Bell's Proposed Tariff Restructuring the Switched Access Local Transport Element, Docket U-20800, on behalf of LDDS, Inc.
- Tennessee Re: Southern Central Bell's Proposed Tariff Restructuring the Switched Access Local Transport Element, Docket 93-08865, on behalf of LDDS, Inc.
- Ohio Re: Application of Ohio Bell for an Alternative Form of Regulation, Docket 93-487-TP-ALT, on behalf of Allnet, LCI and LDDS.
- Mississippi Re: Southern Central Bell's Proposed Tariff Restructuring the Switched Access Local Transport Element, Docket 93-UN-0843, on behalf of LDDS-II, Inc.
- S Carolina Re: Southern Bell's Proposed Tariff Restructuring the Switched Access Local Transport Element, Docket 93-756-C, on behalf of the Interexchange Access Coalition (IAC).
- Georgia Re: Southern Bell's Proposed Tariff Restructuring the Switched Access Local Transport Element, Docket 4817-U, on behalf of the IAC.
- Louisiana Re: Generic Hearing to Clarify the Pricing/Imputation Standard, Docket No. U-20710, on behalf of LDDS.
- Ohio Re: In the Matter of Western Reserve Telephone Company's Request for an Alternative Form of Regulation, Case Nos. 93-230-TP-ALT and 92-1525-TP-CSS, on behalf of an IXC Coalition (MCI, Allnet and LCI).
- New Mexico Re: Inquiry by the Commission into the Local Calling Area for the Albuquerque Metropolitan Area, Docket No. 93-218-TC, on behalf of LDDS Communications.

**EXPERT TESTIMONY (continued)**

Illinois	Re: Application of Illinois Bell for Alternative Regulation, Docket 92-0048, on behalf of LDDS Communications.
Mississippi	Re: Notice of South Central Bell Telephone Company to Introduce Banded Rates for MTS, WATS and 800 Services, Docket 93-UN-0038, on behalf of LDDS Communications.
Florida	Re: Petition of Intermedia Communications of Florida for Expanded Interconnection for AAVs within LEC Central Offices, Docket 92-1074TP, on behalf of the Florida Interexchange Carriers Association.
Louisiana	Re: Objection to the Filing of Reduced WATSSAVER Service Rates, IntraLATA, State of Louisiana, Docket U-20237 on behalf of LDDS, MCI and AT&T Communications.
S Carolina	Re: Application of Southern Bell to Introduce Area Plus Service, Docket 93176-C, on behalf of LDDS and MCI Telecommunications Corporation.
Mississippi	Re: Application of South Central Bell Telephone Company for Adoption and Implementation of a Rate Stabilization Plan, Case 89-UN-5453, on behalf of LDDS and Advanced Telecommunications Corporation.
Illinois	Re: Development of a ' Statewide Policy Regarding Local Interconnection Standards, Docket 92-0398, on behalf of the Competitive Carrier Coalition.
Louisiana	Re: Petition of the Louisiana Payphone Association for Implementation of Dial Around Compensation, Docket U-19993, on behalf of MCI.
Maryland	Re: Petition of the Middle Atlantic Payphone Association to Implement Dial Around Compensation, Docket 8525, on behalf of MCI.
S Carolina	Re: Petition of the South Carolina Public Communications Association for Implementation of Dial Around Compensation, Docket 92-572-C, on behalf of MCI.
Georgia	Re: Application of the Georgia Communications Association for Dial Around Compensation, Docket 4206-U, on behalf of MCI.
Delaware	Re: The Diamond State Telephone Company's Application for a Rate Increase, Docket 91-47, on behalf of MCI.

**EXPERT TESTIMONY (continued)**

Florida	Re: Comprehensive Review of the Revenue Requirements and Rate Stabilization Plan of Southern Bell, on behalf of the Florida Interexchange Carriers Association.
Mississippi	Re: Order of the Mississippi Public Service Commission to South Central Bell to (1) Expand ACP Calling Area, and (2) Include Calls to the County Seat in Capped Local Calling, 92-UA-100, on behalf of LDDS and ATC.
Florida	Re: Application for a Rate Increase by GTE Florida Incorporated 1992, Docket 920188-TL, on behalf of MCI and FIXCA.
Wisconsin	Re: Investigation Into the Extent of Competition in the IntraLATA Toll Telecommunications Market, 05-TI-119, on behalf of MCI and Schneider Communications.
Florida	Re: Investigation Regarding the Appropriateness of Payment for Dial Around Compensation from Interexchange Telephone Companies to Pay Telephone Providers, Docket 920399-TP, on behalf of MCI and FIXCA.
California	Re: The Matter of Alternative Regulatory Frameworks for Local Exchange Carriers and Related Matters, 1.87-11-033, on behalf of Intellical, Inc.
Florida	Re: Petition of Southern Bell Telephone and Telegraph Company for Rate Stabilization and Implementation Orders and Other Relief, Docket 880069-TL, on behalf of the Office of Public Counsel and the Florida AdHoc Users Group.
New York	Re: Impact of the Modification of Final Judgment and FCC Docket 78-72 on the Provision of Toll Service in New York, Case 28425 Phase 111, on behalf of Empire/Altel.
Wisconsin	Re: Investigation of Intrastate Access Costs and Intrastate Access Charges, Docket 05-TR-103, on behalf of Wisconsin CompTel and MCI.
Mississippi	Re: Order of the Mississippi Public Service Commission Initiating Hearings Concerning (1) IntraLATA Competition and (2) Payment of Compensation by Interexchange Carriers and Resellers to Local Exchange Companies, Docket 90-UA-0280, on behalf of Intellicall, Inc.



**EXPERT TESTIMONY (continued)**

- Louisiana      Re: Investigation of the Revenue Requirement, Rate Structure, Charges, Services, Rate of Return, and Construction Program of Central Bell Telephone Company, Docket No. U-17949, Sub-Docket B (IntraLATA Competition), on behalf of Cable & Wireless Communications and ATC Corporation.
- Florida          Re: Petition of Southern Bell Telephone and Telegraph Company for Rate Stabilization and Implementation Orders and Other Relief, Docket 880069-TL, on behalf of the Florida Interexchange Carriers Association.
- Wisconsin       Re: Investigation of Intrastate Access Costs and Intrastate Access Charges, Docket 05-TR-103, on behalf of Wisconsin CompTel.
- Florida          Re: Generic Investigation into the Operations of Alternate Access Vendors, Docket No. 890813-TP, on behalf of Intermedia Communications Inc.
- Alaska          Re: In the Matter of Consideration of Regulations Governing the Market Structure for Intrastate Telecommunications Service, Docket R\_90- 1, on behalf of Telephone Utilities of Alaska.
- Minnesota      Re: In the Matter of the Minnesota Independent Equal Access Corporation's Application for a Certificate of Public Convenience and Necessity, Docket P-3007/NA-89-76, on behalf of MCI and Telecom\*USA.
- Florida          Re: Investigation into Equal Access Exchange Areas, Toll Monopoly Areas, 1 + Restriction to the Local Exchange Carriers, and Elimination of the Access Discount, Docket 880812-TP, on behalf of the Florida Interexchange Carriers Association.
- Wisconsin       Re: Investigation of Intrastate Access Costs, Settlements and intralata Access Charges, Docket 05-TR-102, on behalf of Wisconsin CompTel.
- Wisconsin       Re: Investigation of Application of Wisconsin Independent Telecommunications Systems, Inc. (WITS) for CPCN to Offer Centralized Equal Access, etc.... Docket 6655-NC-100, on behalf of Wisconsin CompTel.
- Florida          Re: Petition of Southern Bell Telephone and Telegraph Company for Rate Stabilization and Implementation Orders and Other Relief, Docket 880069-TL, on behalf of the Florida Interexchange Carriers Association.

**EXPERT TESTIMONY (continued)**

Wisconsin	Re: Application of Various Interexchange Carriers for Authority to Provide Certain IntraLATA Toll Telecommunications Services (Not Including WATS and MTS). Docket 05-NC-100, on behalf of Wisconsin CompTel.
Florida	Re: Forbearance from Earnings Regulation of AT&T and Waiver of Rules. Docket 870347-TL, on behalf of FIXCA.
Illinois	Re: Investigation Concerning the Appropriate Methodology for the Calculation of Intrastate Access Charges for all Illinois Telephone Utilities, Docket 83-01.4---, on behalf of Illinois Consolidated Telephone Company.
Texas	Re: Inquiry of the General Counsel into the WATS Prorate Credit, Docket 8218, on behalf of TEXALTEL
Iowa	Re: Iowa Network Access Division, Docket RPU 88-2, on behalf of MCI and Teleconnect
Florida	Re: Investigation into Regulatory Flexibility for Local Exchange Carriers, Docket 871254-TL, on behalf of Microtel.
Wisconsin	Re: Investigation of Intrastate Interexchange Access Charges and Related Intralata and Interlata Compensation Matters, Docket 05-TR-5 Part B, on behalf of the Wisconsin State Telephone Association.
Florida	Re: Investigation into NTS Cost Recovery - Phase 11, Docket 860984, on behalf of the Florida Association of Concerned Telephone Companies.
Florida	In the Matter of the Interconnection Agreement Negotiations Between AT&T Communications of the Southern States, Inc., and BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. §252 (Docket No. 960833-TP)
N Carolina	In the Matter of the Interconnection Agreement Negotiations Between AT&T Communications of the Southern States, Inc., and BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. §252 (Docket No. P-140, SUB 51)
Tennessee	In the Matter of the Interconnection Agreement Negotiations Between AT&T Communications of the South Central States, Inc., and BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. §252 (Docket No. 96-01152)

**EXPERT TESTIMONY (continued)**

Alabama      In the Matter of the Interconnection Agreement Negotiations Between AT&T Communications of the South Central States, Inc., and BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. §252

Texas          Application of AT&T Communications of the Southwest, Inc. for Compulsory Arbitration to Establish an Interconnection Agreement between AT&T and Southwestern Bell Telephone Company, Docket 16226

Legislative testimony before state legislatures of Illinois, Wisconsin and Indiana.

## PROFESSIONAL APPOINTMENTS

- Advisory Council: New Mexico State University, Center for Regulation
- Faculty: Summer Program, Public Utility Research and Training Institute, University of Wyoming
- Contributing Editor: Telematics: The National Journal of Communications Business, and Regulation, 1985 - 1989
- Member: NARUC Staff Subcommittee on Communications 1984-1985
- Advisory Committee: National Regulatory Research Institute, 1985

## SELECTED PUBLICATIONS

- "The Local Exchange: Regulatory Responses to Advance Diversity", with Peter Rohrbach, Public Utilities Fortnightly, July 15, 1994.
- "Reconcentration: A Consequence of Local Exchange Competition?", with Peter Rohrbach, Public Utilities Fortnightly, July 1, 1994.
- "Diversity or Reconcentration?: Competition's Latent Effect", with Peter Rohrbach, Public Utilities Fortnightly, June 15, 1994.
- "Consumer Sovereignty: An Proposed Approach to IntraLATA Competition", Public Utilities Fortnightly, August 16, 1990.
- "Reforming State Regulation of Exchange Carriers: An Economic Framework", Third Place, University of Georgia Annual Awards Competition, 1988, Telematics: The National Journal of Communications, Business and Regulation, May, 1989.
- "Regulating the Small Telephone Business: Lessons from a Paradox", Telematics: The National Journal of Communications, Business and Regulation, October, 1987.
- "Market Structure Consequences of IntraLATA Compensation Plans", Telematics: The National Journal of Communications, Business and Regulation, June, 1986.
- "Universal Telephone Service and Competition on the Rural Scene", Public Utilities Fortnightly, May 15, 1986.

**SELECTED PUBLICATIONS (continued)**

"Strategies for Deregulation: Federal and State Policies", with Sanford Levin, Proceedings, Rutgers Universe Advanced Workshop in Public Utility Economics, May 1985.

"Regulatory Considerations in the Introduction of Competition into the Telecommunications Industry", with Sanford Levin, Proceedings of the Thirteenth Annual Telecommunications Research Conference, April, 1985.

"Charting the Course to Competition-: A Blueprint for State Telecommunications Policy", Telematics: The National Journal of Communications, Business, and Regulation, with David Rudd, March, 1985.

"Detariffing and Competition: Options for State Commissions", Proceedings of the Sixteenth Annual Conference of Institute of Public Utilities, Williamsburg, Virginia, December 1984. 9

"Externalities, Competition and Telecommunications Pricing: Access and You Shall Receive", Proceedings, NARUC/NRRI Biennial Regulatory Information Conference, September 1982.

"Analyzing the Allocative Efficiency of Lifeline Electricity Rates", Proceedings of ISSUE 82, SPSS Users Conference, August, 1982.



BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICATION OF ERNEST G.	§	
JOHNSON, DIRECTOR OF THE	§	
PUBLIC UTILITY DIVISION,	§	
OKLAHOMA CORPORATION	§	Cause No. 970000064
COMMISSION TO EXPLORE THE	§	
REQUIREMENTS OF SECTION 271	§	
OF THE TELECOMMUNICATIONS	§	
ACT OF 1996	§	

STATEMENT OF FREDERICK R. WARREN-BOULTON  
ON BEHALF OF  
AT&T COMMUNICATIONS OF THE SOUTHWEST, INC. AND MCI

I. INTRODUCTION AND QUALIFICATIONS

1. My name is Frederick R. Warren-Boulton. I am a Principal with MiCRA (Microeconomic Consulting and Research Associates, Inc.), a Washington-based economics consulting and research firm specializing in antitrust and regulatory matters.

2. I hold a B.A. degree from Yale University, a Master of Public Affairs from the Woodrow Wilson School of Public and International Affairs at Princeton University, and M.A. and Ph.D. degrees in Economics from Princeton University.

3. From 1972 to 1983, I was an Assistant and then Associate Professor of Economics at Washington University in St. Louis. From 1983 to 1989, I served as the chief economist for the Antitrust Division of the U.S. Department of Justice, first as the Director of its Economic Policy Office and then as the Deputy Assistant Attorney General for Economic Analysis. Since leaving the Department of Justice, I have served as a Resident Scholar at the American Enterprise Institute, a Visiting Lecturer of Public and International Affairs at the Woodrow Wilson School at Princeton University, and a Research Associate Professor of Psychology at The American University.

4. My area of specialization is in the economics of industrial organization. I have authored numerous publications, primarily in the application of industrial organization economics to antitrust and regulation, including a number of papers that consider appropriate public policy toward regulated industries, including telecommunications. A complete description of my background and papers can be found in my Curriculum Vita, a copy of which is attached to this testimony, as Exhibit FWB-1.

## **II. PURPOSE AND OVERVIEW**

5. The Oklahoma Commission has initiated a docket to investigate Southwestern Bell Telephone Company-Oklahoma's (SWBT) compliance with Section 271 of the Federal Telecommunications Act of 1996 (FTA). AT&T and MCI have asked me to analyze SWBT's compliance with Section 271 from a public interest perspective. I conclude that SWBT has not complied with Section 271, and that any Section 271 application in Oklahoma is premature and should be turned down.

6. Two local telephone markets are relevant to this proceeding: the downstream, retail market, where telecommunications services are sold to final customers, potentially by a large number of suppliers, and the upstream market for unbundled network elements (UNEs), where inputs are sold to providers of retail telecommunications services. The term "facilities-based competition" in the local exchange market refers to competition from a supplier of local exchange services using its own (upstream) facilities. "UNE-based competition" in the local exchange market refers to competition from a supplier of local exchange services that purchases some of its upstream unbundled network elements from the local exchange carrier (LEC). "Resale" refers to competition in the local exchange market based on firms that purchase the LEC's local service at wholesale and resell that service to customers.



7. There are three distinct rationales for linking SWBT's entry into interLATA service to the level of competition for local services. *First*, as long as SWBT controls a regulated, bottleneck facility, it has powerful incentives for anticompetitive behavior in other markets for which access to the bottleneck is essential. When customers have a real choice among facilities-based local competitors, independent long distance companies will become less dependent on the Bell Operating Company's (BOC) upstream (*i.e.*, local exchange) services, reducing the incentive for anticompetitive behavior by the BOC, and reducing the potential harm to competition in downstream markets.

8. *Second*, premature entry into interLATA long distance will allow SWBT to engage in behavior that will limit the extent to which local competition can develop. Among these strategies are signing up customers for bundled local and long distance services before local competition has had a chance to develop; the use of customer-specific discounts on long distance or bundled services in order to cut prices to local service customers most likely to patronize new local service entrants; raising the cost to customers of switching local service providers; providing poor service when customers switch to new local carriers (thereby damaging the new carrier's reputation and requiring it to incur additional costs to mollify their customers); and "most favored nation clauses" (which are a barrier to entry when employed by a monopolist facing entry). These strategies can all enable the BOC to "lock in" its control over local service customers prior to the development of effective local competition.

9. *Third*, regulatory approval of interLATA entry serves as a reward or "carrot" to induce the BOCs to open up their local networks. Under the FTA, the BOCs are required to unbundle their local networks and sell the components at cost-based rates. But these actions on the part of the BOC, while legally required, are complex and difficult to monitor and to determine if the BOC is really complying to the best of its ability. If a BOC receives the carrot

before it has opened its network in a meaningful and irreversible way, its sole business incentive to cooperate in setting reasonable terms, conditions, and operating procedures for local network access by competing local exchange carriers is eliminated.

10. Any complete analysis of a BOC's entry application must address both the benefits and the costs of such entry. In light of recent public statements by SWBT and other BOCs, I anticipate that SWBT will argue that the long distance market is not very competitive, and that its entry will dramatically improve competitive performance. I disagree. Long distance markets are now quite competitive. The successful introduction of competition into the long distance business stands as one of the great accomplishments of antitrust policy. SWBT will also likely argue that significant economies of vertical integration are sacrificed by the interLATA prohibition. I also disagree. Significant economies of vertical integration from BOC entry into interLATA service are very unlikely, especially given the requirements for structural separation in Section 272 of the FTA. Absent any significant expected benefits from interLATA entry by the BOCs, the entry decision should turn on whether the expected harms to competition and to consumers from interLATA entry by the BOCs are also negligible. Because these risks are quite substantial at this time, SWBT should not be allowed to offer interLATA service now.

11. The rest of my statement is structured as follows. Section 3 discusses SWBT's current incentives to discriminate against and, in particular, to refuse to cooperate with, a variety of potential competitors, including nonintegrated long distance companies, unintegrated local competitors, and integrated sellers of both local and long distance service. I also discuss the effects of interLATA entry by SWBT on its incentives to discriminate. Section 4 lays out the analytical framework for assessing a BOC's request for interLATA authority. Section 5 explains that local competition is nowhere near well enough developed to allow approval of SWBT's application for Section 271 authority in Oklahoma. I anticipate and rebut arguments that SWBT

will suffer an unfair advantage in local competition if other firms can vertically integrate before it is allowed to do so. I also address why denial of interLATA relief is appropriate at the current time until uncertainties about a number of important factors will be resolved. A later decision can be made with much better information, and there are no significant offsetting adverse effects on economic efficiency from waiting. Section 6 provides a brief summary and conclusion.

### **III. SWBT HAS SUBSTANTIAL INCENTIVES TO DISCRIMINATE AND TO FRUSTRATE COMPETITION IN BOTH THE LOCAL AND LONG-DISTANCE MARKETS.**

---

#### **A. The Dangers of Allowing a Bottleneck Monopoly, Such as SWBT, Into Related Markets, Such as Long Distance, Are Real and Severe.**

---

12. Until effective local competition develops both in the market for unbundled network elements and in the market for retail local exchange services, SWBT will continue to control bottleneck upstream facilities, the prices and profits of which are constrained by regulation. Public policy for at least the past 15 years has recognized that allowing a regulated, bottleneck monopolist such as SWBT into related markets carries substantial dangers.

13. These concerns are firmly founded in the economics literature.<sup>1</sup> A regulated bottleneck monopolist has a strong financial incentive to enter into and control potentially competitive related markets in order to evade the constraints that regulators attempt to place on its profits and prices at the bottleneck level. Where permitted, it can block competition and exercise control over those related markets simply by refusing rivals access to their bottleneck facilities. Where outright denial is not allowed, it can be expected to attempt to provide access only on discriminatory terms. By raising the input costs of its rivals, an integrated SWBT could

---

<sup>1</sup> See, for example, J.A. Ordover and G. Saloner, *Predation, Monopolization and Antitrust*, 1 THE HANDBOOK OF INDUSTRIAL ORGANIZATION, Chapter 9 (1989.)

profitably increase its own price for the potentially competitive downstream service *while suffering no offsetting loss in the constrained profits of the core monopoly*. SWBT will be able to exercise this kind of control in long distance even though it will start with a 0% market share and may never account for a large or significant share of that market.

14. Additionally, SWBT may attempt to cross-subsidize its competitive activities with revenues from monopoly markets. This cost-shifting is profitable to the extent that SWBT is allowed to pass these costs through to its local service customers through higher rates, as it has an incentive to do under conventional rate-of-return regulation and all "price cap" schemes with any formal or informal profit-sharing features.<sup>2</sup>

15. Absent either enough facilities-based local entry to replace regulation with competition as the effective constraint in SWBT's upstream pricing, or ideal regulation that ensures others access to its local facilities on equivalent terms, SWBT will retain both the ability and incentive to discriminate against competitors in the long distance market. Regulators' ability to regulate access to SWBT's facilities will necessarily be imperfect, however, and long distance competitors (and their customers) cannot expect to benefit from truly nondiscriminatory access to SWBT's facilities until effective competition appears.

#### **B. The Limitations of Regulation**

16. Regulators face severe limitations in attempting to prevent SWBT from acting on such anticompetitive incentives. For example, while regulators might hope to be able to prevent affirmative misdeeds, regulators will face difficulty enforcing a nondiscrimination standard against acts of omission or failures to act. For example, it would be difficult to detect SWBT's

---

<sup>2</sup> For a more extended discussion of incentives for anticompetitive behavior under various forms of price cap or incentive regulation, see John Kwoka, "LEC Price Cap Reform," CC Docket 96-262, *Price Cap Performance Review for Local Exchange Carriers*, January 1997.

failure to treat unaffiliated and affiliated companies the same with respect to R&D projects, or failure to fund capital projects that benefit a long distance rival disproportionately to SWBT's own long distance affiliate.

17. Consider, for example, what would happen if an interexchange carrier (IXC) needed the technical cooperation of a vertically integrated SWBT to introduce technical changes in long distance, either in the form of capital expenditures by SWBT, or collaboration with SWBT on technical interconnection issues.<sup>3</sup> As long as SWBT viewed the ban on its participation in interLATA toll as likely to be in place over the foreseeable future, it would have significant financial incentive to cooperate with the IXC since improved quality or lower prices for long distance service would increase the demand for access and would therefore benefit SWBT. Once SWBT integrates into long distance, or sees it as a realistic near-term possibility, however, its calculation would change. Any new competitive success by the IXC would come, in part, at the expense of SWBT's long distance unit, reducing or eliminating its financial incentives to cooperate with the IXC in facilitating efficient innovation.

18. Even in the absence of conflicting incentives, companies still sometimes do not agree on projects requiring technical collaboration, either because they have differing views on the technical merits of a project, or on costs to be borne by each party. Because technical collaboration often breaks down even when players do not have anticompetitive incentives, it would often be impossible for regulators to determine with certainty that SWBT's decision not to cooperate with an IXC was due to anticompetitive motivation rather than to an ordinary commercial disagreement.

---

<sup>3</sup> For an example of the importance of cooperation and collaboration, see the statement of Phil Gaddy, which discusses SWBT's requirement that AT&T negotiate independent licensing agreements with vendors before using UNEs.

19. Such uncertainty is particularly important because it could prevent the regulator from imposing tough penalties on SWBT if the regulator does decide that the company has behaved anticompetitively. In the terminology of law and economics, a high probability of a "false positive" means that behavior that is not always detected and punished cannot be efficiently deterred using large penalties; significantly greater regulatory oversight and expenditure is required in such cases since, absent penalties, anticompetitive behavior can only be deterred by reducing the "false negative" rate to a minimal level. Translated into normal terminology, this means that if you don't severely punish bad behavior, you have to catch almost every violation.

20. Regulation is especially prone to failure when technology is changing rapidly. Even if reasonable requirements on SWBT were established for existing technology, those regulations will soon become obsolete, along with that technology. Both consumers of access services and regulators must reexamine, in light of the new technology, whether the restrictions SWBT is attempting to place on transactions with its rivals are reasonable or not. As I discuss below, this makes the regulatory progress prone to reversibility; *i.e.*, regulations that worked well yesterday won't work well tomorrow.

21. Examples of the effects of only limited information available to regulators are found from the period prior to the breakup of the Bell System, during which the BOCs provided local exchange service on an integrated basis. Prior to divestiture, both federal and state laws broadly proscribed discrimination against the then new IXC's that were attempting to enter the market. Competitors claimed, however, that the BOC engaged in practices that favored the Bell System long distance service to the detriment of the new entrants. Regulatory oversight of these practices was widely regarded as cumbersome and not particularly effective. Only after extensive discovery in antitrust cases were the facts and issues regarding these practices clearly

understood and only the ultimate divestiture, with structural separation of long distance and local exchange service providers, resolved those issues.

**C. The Opportunity to Engage in Anticompetitive Behavior in the Long Distance Market has Already Been Exploited by the BOCs.**

22. Already, examples abound of LECs behaving anticompetitively in markets that depend on access to their bottleneck facilities. SNET's experience is instructive. SNET has already achieved significant market shares in interLATA long distance (34% of customers and 12% of revenues), and there is good reason to believe that this may have been, at least in part, a result of discrimination. SNET terminated its billing arrangement with AT&T after it entered the interLATA market, and began advertising that customers could now receive one bill through SNET but not AT&T.<sup>4</sup> Absent incentives to discriminate against (or to withhold cooperation from) rival IXC's, SNET's decision to terminate its billing arrangement for AT&T is puzzling. Although AT&T had announced plans to bill on its own in the future, it would have been profitable for SNET, absent an incentive to discriminate, to continue to bill for AT&T until AT&T was ready to make the switch. Instead SNET abandoned the profits it was earning on billing for AT&T. Why? Ending the billing arrangements with AT&T must have resulted in an increase in profits in other markets that more than offset the profits lost from ending the billing arrangement.

23. Quite frankly, it is hard to put a nondiscriminatory interpretation on SNET's behavior. It stood to earn additional profits from its billing service if it continued to provide service to AT&T. Terminating service clearly improved the attractiveness of SNET's long

---

<sup>4</sup> SNET's market share has come predominantly from AT&T. SNET continued to bill for other long distance carriers, so the other IXC's were able to continue "one-bill" service to their customers after SNET's entry.

distance relative to AT&T's, but it did so by reducing the quality of AT&T's service and not by improving the quality or reducing the price of SNET's service.

24. Other examples of discrimination by BOCs in the long distance market include:

- (a) In Michigan, Ameritech's defiance of orders to provide intraLATA one-plus presubscription (presubscribed intraLATA carrier or PIC) has generated numerous competitor complaints and lawsuits. Ameritech's refusal to accommodate market-opening regulations has seriously slowed the development of intraLATA toll competition.
- (b) USWest has successfully resisted for almost ten years orders from the Minnesota regulator to provide one-plus intraLATA dialing.
- (c) "Anti-slamming" campaigns are timed to raise the marketing costs of newly authorized intraLATA competition. Ameritech initiated "PIC freezes" in three of its five states, just when those intraLATA markets were opened to presubscription.<sup>5</sup>
- (d) SNET has a policy of allowing its long distance affiliate to know which customers have signed up for a PIC freeze, while denying that information to other carriers. This raises the marketing costs of competing long distance carriers relative to SNET.

#### **D. SWBT's Incentives to Frustrate Local Competition**

25. In addition to a BOC's incentive to engage in anticompetitive behavior in the long distance market, a BOC also has substantial incentives to frustrate local competition. Concerns over the incumbent LECs' ability and incentive to discourage local competition proceeds from a different theoretical framework than the concerns described above regarding anticompetitive leveraging into adjacent markets. The incumbent LECs have incentives to discriminate against local exchange competitors that are even more direct than their incentives to discriminate against rival long distance suppliers.

---

<sup>5</sup> The PIC freezes raise the costs of changing carriers which, given SWBT's large share of intraLATA traffic, inflicts far greater costs on its rivals than on itself.



26. The BOCs have incurred enormous sunk costs to build their local networks. The modern economics literature recognizes the role that sunk costs play as barriers to entry.<sup>6</sup> When incumbents have sunk their costs, and entrants have not, incumbents are said to have a "first-mover" advantage.<sup>7</sup> First-mover advantages often turn out to be of strategic importance because the incumbent, having already sunk its costs, will have available a variety of tactics that are relatively costless to it, but that can dramatically reduce the incentives of potential entrants to actually sink the costs necessary to enter. Because the value of monopoly profits will exceed the entrant's portion of duopoly profits, actions taken by the incumbent which appear to inflict equal costs or losses on both the entrant and incumbent will be highly profitable to the incumbent if it reduces or forecloses entry.

27. Examples of potentially exclusionary tactics include strategic use of *long term contracts*. Incumbents faced with potential entry have incentives to sign up customers to long term contracts, and to stagger the terms of those contracts. Simply "locking in" customers to long term contracts pushes the threat of entry off into the future, since the size of the entrant's potential market is smaller, and therefore the average sunk cost per customer increases.<sup>8</sup> This,

---

<sup>6</sup> The sunk costs associated with entry are the costs that cannot be recovered if the entry attempt is unsuccessful. Common examples are marketing costs (to the extent, as will usually be the case, that the "brand name capital" cannot readily be transferred to other markets), facilities costs (to the extent that full value of the equipment, less normal depreciation, cannot be recovered in a used equipment market), and any costs incurred to compensate customers for the costs they incur in switching suppliers.

<sup>7</sup> First-mover advantages are not simply the product of being first. If sunk costs are not necessary for entry, no first-mover advantage exists.

<sup>8</sup> The last step in the logic assumes that there are either scale economies or economies of density, at least at low volumes, associated with sunk costs of entry. That is clearly true for local entry. Although the various engineering models of the local exchange might differ in their calculations of average cost at various output levels, there does appear to be a general consensus that there are economies of scale and density at low levels of output. Indeed, absent such economies, claims that small or less dense rural exchanges need "universal service" support from consumers in other areas in order to get telephone service at reasonable rates would be completely without merit.